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**UNITED STATES DISTRICT COURTS
DISTRICT OF NEVADA**

Byford "Peter" Whittingham an Individual,

Plaintiff,

VS.

Attorney General's Office a Corporation,
DOES 1-50, inclusive and ROE
CORPORATIONS 1-50, inclusive,

Defendants.

CASE NO.: 2:20-cv-00811-GMN-EJY

**PLAINTIFF'S MOTION FOR LEAVE
TO AMEND PLAINTIFF'S
COMPLAINT**

Plaintiff Byford “Peter” Whittingham (“**Mr. Whittingham**” or “**Plaintiff**”) by and through his attorneys of record, HKM Employment Attorneys LLP, hereby submits his Motion for Leave to Amend Plaintiff’s Complaint (the “**Motion**”). This Motion is made and based upon the attached Memorandum of Points and Authorities, the pleadings and papers on file herein, any attachments and any argument allowed at the time of hearing.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff respectfully requests that this Court give Plaintiff leave to amend the Complaint with the following changes:

1. Correct the Entity Subject to Suit;
2. Add Defendants and correct the causes of action already asserted; and
3. Should the Court decide the Complaint lacks any of the necessary factual requisites upon review of Defendant's Motion to Dismiss, allow Plaintiff to allege the same.

Plaintiff seeks to amend the Complaint timely and out of necessity for the proper administration of justice. There has been no undue delay and there is no bad faith in seeking the amendment. Finally, there is no prejudice to the opposing party.

II. FACTUAL AND PROCEDURAL BACKGROUND

On May 5, 2020, Plaintiff filed his Complaint and Jury Demand in this matter, bringing the following claims against Defendant:

1. Retaliation under Federal Law, 42 U.S.C. § 2000e-3 and Nevada State Law, NRS Chapter 613;
2. Violation of 42 U.S. Code § 1983 Equal Protection; and
3. Violation of The Civil Rights Act of 1871, 42 U.S.C. §1981.

The Complaint concerns Plaintiff's application for employment with the Nevada Attorney General's Office. Plaintiff applied for the position of Criminal Investigator II and was made an offer subject to a background investigation. However, Defendant withdrew the offer after finding out more about Plaintiff's lawsuit against the LAPD, his former employer, for race discrimination.

On July 1, 2020, Defendants filed their Motion to Dismiss, challenging Plaintiff's causes of action.

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1 **III. LEGAL STANDARD**2 **1. F.R.C.P. 15(a)**

3 F.R.C.P. 15(a) provides in part that after a response to a pleading has been entered, a
 4 party may amend the party's pleading only by leave of court or by written consent of the adverse
 5 party; and leave shall be freely given when justice so requires.

6 In discussing the Federal Rules of Civil Procedure, the Court in *In Re Western States*
 7 *Wholesale Natural Gas Antitrust Litigation* 2013, 715 F. 3d 716, certiorari granted 134 S.Ct.
 8 2899, 189 L.Ed.2d 854, affirmed 135 S.Ct. 1591, 191 L.Ed.2d 511, certiorari denied 135 S.Ct.
 9 2048, 191 L.Ed.2d 955 held that on a motion to amend a pleading, the court considers five
 10 factors in its analysis: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4)
 11 futility of amendment, and (5) whether plaintiff has previously amended his complaint. *In re*
 12 *Western States Wholesale Natural Gas Antitrust Litigation*, 2013, 715 F.3d 716, certiorari
 13 granted 134 S.Ct. 2899, 189 L.Ed.2d 854, affirmed 135 S.Ct. 1591, 191 L.Ed.2d 511, certiorari
 14 denied 135 S.Ct. 2048, 191 L.Ed.2d 955.

15 Sufficient reasons to deny a motion to amend a pleading include undue delay, bad faith
 16 or dilatory motives on the part of the movant, none of which are at issue here. *Kantor v.*
 17 *Kantor*, 2000, 8 P.3d 825, 116 Nev. 886.

18 **IV. LEGAL ARGUMENT**

19 Plaintiff respectfully moves the Court, pursuant to Rule 15 of the Federal Rules of Civil
 20 Procedure, for leave to file an Amended Complaint, a copy of which is attached hereto. The
 21 Proposed Amended Complaint corrects the name of the current Defendant and adds new
 22 Defendants to the suit in the interest of justice and the fair resolution of this case: The State of
 23 Nevada, ex. rel. Nevada Attorney General's Office, a Subdivision of the State of Nevada; Aaron
 24 Ford, Nevada Attorney General; David O'Hara, Supervising Investigator; Jane Doe; DOES 1-
 25 50. Further, the Proposed Amended Complaint provides clarification to some allegations and
 26 amends others in accordance with the Opposition to the Motion to Dismiss.

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1 **1. Plaintiff Asks the Court for Leave to Amend the Complaint to Correct the**
 2 **Entity Subject to Suit.**

3 Plaintiff hereby respectfully requests that the Court give Plaintiff leave to amend the
 4 Complaint per F.R.C.P. 15(a) to correct the Entity Subject to Suit and to add three additional
 5 Defendants. The First Amended Complaint¹ would name the Defendants as follows: "THE
 6 STATE OF NEVADA, ex. rel. NEVADA ATTORNEY GENERAL'S OFFICE, a Subdivision
 7 of the State of Nevada; AARON FORD, Nevada Attorney General; DAVID O'HARA, an
 8 Individual and in his capacity as Supervising Investigator for the Nevada Attorney General's
 9 Office; JANE DOE, an individual and in her capacity as an employee of the State of Nevada;
 10 DOES 1-50."

11 **2. There is No Bad Faith or Dilatory Motive on the Part of Plaintiff.**

12 There is no bad faith or dilatory motive on the part of the Plaintiff in bringing Aaron
 13 Ford, David O'Hara and Jane Doe as defendants. The facts surrounding their involvement are
 14 clear in the Complaint. Plaintiff believes they played a crucial role in the events leading to
 15 Plaintiff's claims and that their conduct was willful and purposeful. As such, Plaintiff seeks to
 16 amend the Complaint timely and out of necessity for the proper administration of justice.

17 **3. There Has Been No Undue Delay in Filing the Instant Motion.**

18 Plaintiff filed the Complaint on May 5, 2020. The parties have not had their 26(f)
 19 Scheduling Conference and have not engaged in discovery yet. As such, the deadline to amend
 20 pleadings and add parties is still to be determined. Further, at the time of writing this response,
 21 the Early Neutral Evaluation Session is currently scheduled for approximately twenty (20) days
 22 from this filing, August 19, 2020. Though also at the time of writing, Defendants counsel has
 23 inquired about the possibility of moving the ENE, to which Plaintiff has agreed. It is anticipated
 24 a stipulation will be forthcoming shortly. Therefore, this request is timely and there has been
 25 no undue delay. Should the Court grant Plaintiff leave to file a First Amended Complaint
 26 naming the new parties, the anticipated new parties will have sufficient time to participate in

1 ¹ Attached hereto as Exhibit A.

1 discovery. Plaintiff would also stipulate to an extension of the discovery period should the need
2 arise.

3 **4. There is No Prejudice to the Opposing Party.**

4 There is no prejudice to the existing Defendant or to the proposed Defendants should
5 the Court grant Plaintiff's Motion – the case is in its early stages and, absent an extension, the
6 anticipated discovery cutoff date, subject to the parties 26(f) Scheduling Conference, is not until
7 at least five more months. As such, Plaintiff's interest outweighs any potential prejudice against
8 Defendants or the proposed defendants.

9 **5. The Proposed Amendment is Not Futile.**

10 Amending the Complaint would not be futile because the proposed parties, corrections
11 and changes to the allegations would provide essential information to Plaintiff's claims and
12 would attribute to the fair resolution of this case.

13 **V. CONCLUSION**

14 Based upon the foregoing, Plaintiff respectfully requests that the Court deny
15 Defendants' Motion and grant Plaintiff's request for leave to amend the Complaint.

16 Dated this 30th Day of July, 2020.

17 **HKM EMPLOYMENT ATTORNEYS LLP**

18 */s/ Jenny L. Foley*
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32 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 2020, I caused to be served a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR LEAVE TO AMEND PLAINTIFF'S COMPLAINT** on the following persons as follows:

by placing the same for mailing in the United States Mail, in a sealed envelope on which first class postage was prepaid in Las Vegas, Nevada and/or

X to be sent via electronic filing with the Clerk of the Court using the Court's electronic filing system – CM/ECF and serving all parties with an email address of record who have agreed to receive Electronic Service in this action

____ to be hand delivered to the persons and/or addresses below:

/s/ Jai Tanghal